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No. 88-367

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1988

ANTHONY RUGGIANO,

*Petitioner.*

VS.

UNITED STATES OF AMERICA,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

## REPLY BRIEF OF PETITIONER

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## REPLY BRIEF PETITIONER

### ARGUMENT

1. The respondent argues that a writ of certiorari should be denied because the proof at trial was sufficient to establish that petitioner extended credit in connection with "the business of lending money" within the meaning of 18 U.S.C. §1961(6). The respondent argues that proof of this element was provided by the out-of-court declarations of Reale in the course of delivering funds to Iannuzzi and Bonino. Thus, respondent avers that, ". . . . Reale told them they were getting a favorable rate and suggested that they might later need another loan (105 R. 349-59;

110 R. 993-94). That statement indicates that petitioner and Reale were engaged in making usurious loans as a regular business activity" (Brief in Opp. at 5). Reliance on Reale's statement is inappropriate because the district court limited admission of that statement to show Bonino's state of mind (110 R. 993). It may not, therefore, be relied upon for the truth of the matter asserted as respondent attempts to do. Thus, respondent has not demonstrated adequate proof of "the business of lending money. . . .at a usurious rate."

2. With respect to petitioner's position that 18 U.S.C. §4205(a) does not authorize a trial court's increase of the parole eligibility date beyond ten years, respondent acknowledges an even split of authority among the circuit courts of appeals but argues that a writ of certiorari should be denied because §4205 was repealed by the Sentencing Reform Act of 1984, Pub.L. No. 98-473, §218(a)(5), 235, 98 Stat. 2027, 2031, as amended by the Sentencing Reform Amendments Act of 1985, Pub.L. No. 99-217, §4, 99 Stat. 1728. Respondent reasons that the repeal of 4205 renders the issue "of no continuing importance" (Brief in Opp. at 6). However, government projections indicate that over the next four years 33,000 cases subject to sentencing pursuant to §4205, will be prosecuted in federal courts.[1] If there are an average of three defendants per case, almost 100,000 defendants will be sentenced pursuant to §4205 even if the sentencing guidelines and the repeal of §4205 are not disturbed by this Court. Therefore, the issue is of continuing importance and should be considered by the Court.

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[1] The United States Sentencing Commission from unpublished projections has provided the following figures to petitioner:

| Fiscal Year Ending | Projection of New Non-guideline Cases in System |
|---|---|
| 9/30/89 | 17,000 |
| 9/30/90 | 9,000 |
| 9/30/91 | 5,000 |
| 9/30/92 | 2,000 |
| TOTAL | 33,000 |

Respondent also argues that even if the Court, in *United States v. Mistretta*, no. 87-1904 (argued October 5, 1988), strikes down the sentencing guidelines established by the Sentencing Reform Act and the repeal of §4205 is also struck down, nevertheless, this case should not be reviewed because in the respondent's opinion, petitioner would likely not be granted parole after he has served ten years in prison. Certainly whether a writ of certiorari will or will not be granted, should not turn upon the speculation of either party concerning events and judgments to be made many years in the future.[2] Moreover, whether or not the parole commission grants petitioner parole prior to serving 13 years in prison, petitioner has a right to be afforded the opportunity for release prior to expiration of the 13-year minimum. Review by this Court is warranted to safeguard respondent's right to be afforded the opportunity for parole after 10 years as specified by §4205.

Review is warranted to safeguard Mr. Ruggiano's rights as well as those of all other defendants who stand indicted for crimes committed prior to November 1, 1987.[3] Further, should the Court strike down the repeal of §4205, then a determination of this issue would potentially affect every pending criminal prosecution and review would be even more appropriate in order to resolve the conflict among the Circuit's insuring uniformity in the imposition of sentences throughout the federal judicial system.

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[2] Respondent does not cite parole commission guidelines or any other authority to support its belief that petitioner would likely not be paroled. In fact, those guidelines, petitioner's age, and cancerous condition suggest he would be paroled.

[3] Considering applicable statutes of limitations, indictments can be found for offenses committed prior to November 1, 1987, well into 1992, and in some cases, beyond (*see, e.g.*, 26 U.S.C. § 6531, prescribing a six-year statute of limitations for some tax offenses).

## CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Dated: New York, New York
November, 1988

Respectfully submitted,

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